

ORIGINAL

COOPERATION AGREEMENT  
(NAVAL TRAINING CENTER REDEVELOPMENT PROJECT)

6/26/00  
#5

THIS AGREEMENT is entered into as of the 26<sup>th</sup> day of June, 2000, by and between the CITY OF SAN DIEGO, a charter city (the "City") and the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body, corporate and politic (the "Agency").

RECITALS

A. The City Council of the City of San Diego ("City Council"), acting pursuant to the provisions of the California Community Redevelopment Law (California Health and Safety Code § 33000 et seq.), has activated the Agency, declared itself to constitute the Agency and has approved the Redevelopment Plan for the Naval Training Center Redevelopment Project (the "NTC Redevelopment Project" and "NTC Redevelopment Plan").

B. The City Council has adopted that certain Naval Training Center San Diego Reuse Plan ("Reuse Plan") providing for the redevelopment and reuse of the NTC Redevelopment Project area.

C. The City and the United States of America (the "Government") have entered into that certain "Memorandum of Agreement for an Economic Development Conveyance of Property at the Former Naval Training Center, San Diego" (the "MOA") pursuant to which the Government has conveyed to the City approximately 429 acres of real property in the NTC Redevelopment Project (the "Site"), for redevelopment and reuse as provided in the Reuse Plan.

D. Concurrently with this Cooperation Agreement, the Agency has entered into a Disposition and Development Agreement (the "DDA") with McMillin NTC, LLC ("Master Developer"), providing for the conveyance and redevelopment of the Site. City and Agency acknowledge that the Master Developer is entering into the DDA in reliance on Agency and City entering into this Cooperation Agreement and the Master Developer is the intended beneficiary of certain rights of Agency contained in this Cooperation Agreement as delineated in Section 5.4 hereof.

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6-5-00

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OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA

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OFFICE OF THE REDEVELOPMENT AGENCY  
SAN DIEGO, CALIF.

E. Pursuant to and in accordance with the powers and authorization provided to public bodies in California Health and Safety Code § 33220 to aid and cooperate in the planning, undertaking, construction and operation of redevelopment projects, the City and the Agency desire to enter into this Agreement in order to carry out the NTC Redevelopment Plan and the Reuse Plan and to assist the Agency in performing its obligations under the DDA.

F. Pursuant to the Community Redevelopment Law, the Agency is performing a public function of the City and may have access to services and facilities of the City, and may accept financial and other assistance from the City.

G. The Agency and the City mutually desire to enter into this Agreement for the following purposes:

(1) To provide for activities, services and facilities which the City will provide and make available to or for the Agency in furtherance of the activities and functions of the Agency in connection with the Redevelopment Project under the Community Redevelopment Law;

(2) To provide that the Agency will reimburse the City for actions undertaken and costs and expenses incurred by the City for and on behalf of the Agency, and will repay funds advanced by the City to or for the Agency pursuant hereto;

(3) To provide the terms and conditions pursuant to which the City will sell the Site to the Agency; and

(4) To provide that the City will otherwise cooperate with the Agency in the effectuation and implementation of the NTC Redevelopment Plan, the Reuse Plan and the DDA.

#### AGREEMENTS

## PART 1      CITY ASSISTANCE

1.1 Purpose of City Assistance. Upon the written request of the Agency's Executive Director or designee, the City agrees to assist the Agency by paying or defraying costs incurred by the Agency or the City on behalf of the Agency, in connection with the Redevelopment Project, which costs shall include, but are not limited to the following: (a) preparation and implementation of the NTC Redevelopment Plan pursuant to the Community Redevelopment Law; (b) preparation and implementation of the Reuse Plan; (c) preparation and implementation of applications to the Government relating to the acquisition of the Site; (d) preparation and implementation of the DDA and other agreements with the Master Developer and its assignees for the implementation of the NTC Redevelopment Plan and the Reuse Plan; (e) costs of surveys, plans, studies and environmental assessments relating to the NTC Redevelopment Project area; (f) costs, if any, of acquisition of property within the NTC Redevelopment Project area; (g) costs of property management, maintenance, repair, demolition and clearance of properties acquired, site preparation, public improvements and relocation assistance to displaced residential and nonresidential occupants; and (h) expenditures of approximately \$7.5 million pursuant to agreement between the City and homeless social service providers for off-site services and facilities.

1.2 Form of City Assistance. The City's assistance may take the form of any of the following: (a) provision of services (through City employees and/or officers and/or City consultants), supplies, or facilities to the Agency; (b) advances of City funds to the Agency, or expenditure of City funds by the City on behalf of the Agency, to pay for services (including services provided by Agency consultants and attorneys), supplies or facilities; or (c) any combination of (a) and (b), as determined by the City. The aggregate amount of such City assistance, including the provision of services, the cost of which shall be determined by the City, shall not exceed the amount budgeted for such purposes by the City Council.

1.3 Repayment of Debt. The Agency agrees to repay the City for all City funds advanced and all assistance and services rendered hereunder. On the basis of procedures established by the City Manager, the City shall compute the costs of the services and facilities provided hereunder and the amount of funds expended on the Agency's behalf and/or advanced to the Agency. The City shall submit to the Agency, on an annual basis, a statement of such costs, expenditures and advances, to evidence the Agency's repayment obligation (the "Statement of Costs"). Such statements shall include a proration of the City's administrative and salary expense attributable to the rendition of services by City officials, employees and departments on behalf of the Agency; provided, however, that no City officer or employee shall be paid extra compensation for any work performed for the Agency unless such compensation is expressly authorized and provided by the City Council. The City shall maintain adequate accounting records to substantiate the costs billed to the Agency under this Agreement.

1.4 Terms of Repayment. The Agency agrees to repay the City, upon demand, the total costs enumerated in all annual Statements of Costs, with interest at the rate of eight percent (8%) per annum, compounded, computed from the date upon which the cost was incurred or the funds were advanced by the City, but only to the extent that the Agency has tax increment revenues available pursuant to California Health and Safety Code Section 33670 or from other sources, which are not otherwise needed to carry out the NTC Redevelopment Plan, the Reuse Plan and the Agency obligations under the DDA. The parties agree, however, that the indebtedness of the Agency to the City created by this Section is and shall be subordinate to any pledge of tax increments made by the Agency in connection with any bonds or other obligations issued by the Agency or another public entity under contract with the Agency to finance any part of the redevelopment of the NTC Redevelopment Project area. The Agency shall repay the entire indebtedness created hereunder not later than the applicable time limit the Agency has to repay indebtedness with the proceeds of taxes received pursuant to California Health and Safety Code Section 33670 in the Redevelopment Project area.

## PART 2      ACQUISITION AND SALE OF SITE

2.1 Acquisition of Site from the Government. The City and Agency shall use their best efforts in the negotiation and implementation of the MOA to ensure that title to the Site acquired by the City from the Government will permit the implementation of the NTC Redevelopment Plan, Reuse Plan and the DDA.

2.2 Agreement to Sell to Agency. The City hereby agrees to sell the Site to Agency and the Agency hereby agrees to buy the Site from the City in accordance with the terms and conditions of this Cooperation Agreement.

2.3 Purchase Price. The purchase price for the Site shall be calculated as \$ 8,300,000 (the "Purchase Price"), which shall be deferred and payable solely as provided in Section 2.4, below.

2.4 Terms of Payment. The Agency agrees to pay the Purchase Price to the City, upon demand, with interest at the rate of eight percent (8%) per annum, compounded, computed from the date of conveyance to the Agency, but only to the extent that the Agency has tax increment revenues available pursuant to California Health and Safety Code Section 33670 or from other sources, which are not otherwise needed to carry out the NTC Redevelopment Plan, the Reuse Plan and the Agency's obligations under the DDA. The parties agree, however, that the indebtedness of the Agency to the City created by this Section is and shall be subordinate to any pledge of tax increments made by the Agency in connection with any bonds or other obligations issued by the Agency or another public entity under contract with the Agency to finance any part of the redevelopment of the NTC Redevelopment Project area. The Agency shall repay the entire indebtedness created hereunder not later than the applicable time limit the Agency has to repay indebtedness with the proceeds of taxes received pursuant to California Health and Safety Code Section 33670 in the Redevelopment Project area. Any portion of the Purchase Price received by the City during the first seven years after the recordation of the first deed from the Government to the City for any part of the Site shall be subject to and used by the City in accordance with the MOA.

## 2.5 Escrow.

Not later than the time provided in the DDA for the conveyance of fee or leasehold title to the Master Developer or its assignees, the City shall execute one or more grant deeds, conveying to the Agency fee title to the Site or portion thereof. Agency shall be responsible for paying all escrow and title charges and fees in connection with such conveyance. City and Agency shall cooperate and execute such instruments and documents as may be necessary to close escrow.

2.6 Maintenance. If applicable, upon taking title to the Site, or any portion thereof, Agency shall maintain such property or cause the Master Developer to maintain such property, either at no cost to City, or subject to reimbursement to the City for costs incurred by City and described in Section 1.1(g), above, until the conveyance of title to the Master Developer or its assignees pursuant to the DDA. To implement this Section 2.6, the DDA provides that not later than 90 days after the mutual execution of the DDA, NTC Property Management, LLC, an affiliate of the Master Developer, shall assume the obligation to maintain, manage and operate the Site, in accordance with the Interim Lease Agreement attached to the DDA as Attachment No. 14. City agrees to execute the Interim Lease Agreement substantially in the form attached to the DDA, and to assign to Master Developer all leases affecting the Site, concurrently with the effective date of the Interim Lease. In addition, the Master Developer (or its affiliate) shall assume the obligation to manage, on an interim basis, that property designated in the DDA as the "Park", the Remediation Parcels and the Boat Channel, pursuant to a management agreement to be negotiated and entered into between the City and the Master Developer. The terms and conditions of the management agreement shall be subject to the mutual approval of the City and that is mutually acceptable to the City and Master Developer.

## PART 3 INDEBTEDNESS CREATED.

The obligations of the Agency under this Agreement, whether to repay funds or reimburse the City for services rendered or expenditures made on the Agency's behalf, or to pay the deferred Purchase Price, shall constitute an indebtedness of the Agency

within the meaning of California Health and Safety Code § 33670, et seq., for the NTC Redevelopment Project area.

#### PART 4      COOPERATION.

4.1 General. The Agency and City acknowledge that the DDA is intended to carry out the City Council-approved NTC Redevelopment Plan and Reuse Plan, and that the implementation of the DDA may require a number of actions to be undertaken over an extended period of time by the City and/or Agency and their respective staff members, including but not limited to those set forth in this Part 4, below. In taking such and similar actions, the City and Agency agree to cooperate in good faith, within applicable legal constraints and consistent with applicable City and Agency policies, and to take such actions as may be necessary or appropriate to effectuate and carry out the terms and conditions of the DDA in a timely and commercially reasonable manner. The City further agrees that it shall take no action which shall unreasonably interfere with the ability of the Agency to perform its obligations under the DDA in a timely and commercially reasonable manner.

4.2 Review of Plans and Entitlement Applications. The City acknowledges that the Site has previously been developed by the Navy for the singular purpose of being used as a naval base and training center, and that the re-use of the Site for the purposes set forth in the City Council-approved Reuse Plan is subject to physical constraints that do not exist generally in other parts of the City of San Diego. Therefore, the City agrees to be reasonable in interpreting and applying to the Site applicable design standards so that the purposes of the City Council-approved Reuse Plan may best be carried out. Subject to Section 4.1, the City and Agency shall cooperate in good faith to expedite the review, processing and approval of all plans and entitlement and permit applications, environmental clearances and other similar City approvals relating to the improvements to be constructed or rehabilitated on the Site by Master Developer or its assignees. In so doing, it is the intent of the City and Agency to give the Project the highest priority and emphasis and, to the extent permitted by applicable law and City policies, and to the extent that health and safety matters are addressed in a safe and prudent

manner, that applicable codes and rules shall be interpreted and applied in a manner that is consistent with standards, if any, that are set forth in the Reuse Plan and the DDA. The City further agrees to reasonably accept (and provide for the proportionate release of bonds) in phases the public facilities required as a condition of City approval of any development on the Site.

4.2.1 Acknowledgment of Private Nature of Project.

City and Agency acknowledge that upon conveyance of title by Agency to Master Developer or its assignees pursuant to the DDA: (a) the buildings and other improvements to be constructed and rehabilitated pursuant to the DDA shall be privately owned, including those buildings and improvements that are situated on property owned in fee by the Agency and ground leased to Master Developer or assignee; (b) except for obligations of the Agency, if any, specifically described in the DDA, the Agency and City will have no interest or responsibilities for or duty to third parties concerning any of the construction or improvement work to be performed pursuant to the DDA; (c) subject to any applicable ground lease in which Agency is the landlord, Master Developer or its assignees, as applicable, shall have full power over and exclusive control of the Site; and (d) the contractual relationship between the Agency and Master Developer in the DDA is such that Master Developer is not an agent of the Agency or City. Therefore, the City and Agency agree that to the extent a particular application of any rule or regulation depends on whether a building or improvement is publicly owned or privately owned, it is the express intention of the City and Agency in entering into this Cooperation Agreement that the buildings and improvements to be constructed and rehabilitated by Master Developer or its assignees on the Site pursuant to the DDA shall be deemed to be privately owned for all purposes.

4.2.2 Disclaimer. Except as provided in this

Cooperation Agreement, the City neither undertakes nor assumes nor will have any responsibility or duty to Master Developer or to any other person or entity, as the result of this Agreement, to review, inspect, supervise, pass judgment upon or inform any party of any matter in connection with the development, rehabilitation or construction of the improvements on the Site, whether regarding the quality, adequacy or suitability of the plans, any labor, service,



equipment or material, any person furnishing the same, or otherwise. Master Developer and all other persons and entities shall rely upon its or their own judgment regarding such matters. The City shall not be responsible for any of the work of construction, rehabilitation, improvement or development on the Site. Nothing contained in this Agreement shall be deemed to waive or modify any otherwise applicable obligations the City, acting in its governmental capacity and not as a party to this Cooperation Agreement, may have to Master Developer or any other party, under and in accordance with all applicable laws.

4.3 Other Governmental Agency Permits. Subject to Section 4.1, City and Agency shall cooperate and actively support all applications required to be made by Master Developer and its assignees for permits, approvals and entitlements necessary for the implementation of the DDA, from other governmental agencies, including but not limited to, the California Coastal Commission, the Regional Water Quality Control Board, the United States Army Corps of Engineers, the United States Fish and Wildlife Service, the California Department of Fish and Game, the Port of San Diego and the State Lands Commission.

4.4 Public Financing. Subject to Section 4.1, City and Agency shall consider in good faith implementing such public financing mechanisms as may be appropriate to carry out the method of financing described in the DDA. It is intended that any public financing proposed shall conform with City public financing policies as approved by the City Council.

4.5 Capacity and Impact Fees. The City acknowledges that, pursuant to previous City studies, credits are available on an equivalent dwelling unit basis for water and sewer capacity fees sufficient to allow the entire redevelopment of the Site consistent with the Reuse Plan and the DDA. The City acknowledges that the Master Developer shall be constructing or causing the construction of major transportation and park facilities. To the greatest extent allowed under existing law, the Master Developer or assignee shall be entitled to a credit against any impact fees otherwise applicable to the redevelopment of the Site.

4.6 Remediation and Recycling. The City will cooperate and allow the recycling of materials on site to the fullest extent allowable under applicable law for uses such as trenching, road construction, foundations and parking lots.

4.7 Applicable Standards. The City acknowledges that certain standards were used as assumptions for the cost estimates contained in Appendix "I" of the Reuse Plan. The assumptions included the retention of existing roads and utilities in their current configuration.

4.8 Dry Utility Franchises. The Master Developer has requested that the City and Agency explore the possibility of incorporating into the reuse of the Site state-of-the-art communications technology, including voice, data, wired and airborne transmission. Agency and City agree that the reuse of the Site provides a unique opportunity to accomplish this objective in the context of the development of a mixed-use community, support the concept and agree to cooperate reasonably with the Master Developer, by, among other things, making available their rights of way and other properties under their control on the Site for airborne stations or wiring, on reasonable terms and conditions, consistent with all applicable federal, state and local laws and regulations and City policies and practices.

4.9 Environmental Insurance. Reference is hereby made to subparagraph a.(5) of Section 6.8 of the DDA, pursuant to which the Master Developer has agreed to obtain environmental insurance covering the Site and the Park, commencing with the execution of the DDA, naming the Master Developer, the Agency and the City as insureds. Agency and City hereby agree that to the extent a deductible is required to be paid by the Agency or City for claims arising prior to the conveyance of fee or leasehold title to the Master Developer (or Foundation) pursuant to subparagraph a.(5)(d) of said Section 6.8, as between the Agency and City, it shall be the party holding fee title to the parcel that shall be responsible for paying such deductible.

## PART 5      GENERAL PROVISIONS

5.1 Remedies. If either party defaults with regard to any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured within ninety (90) days after service of the notice of default, or if the default is not commenced to be cured within thirty (30) days after service of the notice of default and is not cured promptly within a reasonable time after commencement, the non-defaulting party shall have the right to enforce this Cooperation Agreement; provided, however, that such enforcement shall be limited to specific performance or injunctive relief, and shall not, under any circumstances, include monetary damages or monetary relief of any sort.

5.2 Liability and Indemnification. In contemplation of the provisions of Section 895.2 of the California Government Code imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement as defined by Section 895 of said Code, the parties hereto, as between themselves, pursuant to the authorization contained in Section 895.4 and 895.6 of said Code, will each assume the full liability imposed upon it, or any of its officers, agents or employees by law for injury caused by negligent or wrongful act or omission occurring in the performance of this Agreement to the same extent that such liability would be imposed in the absence of Section 895.2 of said Code. To achieve the above stated purpose each party indemnifies and holds harmless the other party for any loss, costs or expense that may be imposed upon such other party solely by virtue of said Section 895.2. The provisions of Section 2778 of the California Civil Code are made a part hereof as if fully set forth herein.

5.3 Entire Agreement. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or part of the subject matter hereof.

5.4 Third Party Beneficiary. Except as stated in this Section 5.4, the terms of this Agreement are only for the benefit

of the City and the Agency, and there are no other intended or incidental third party beneficiaries hereto. Notwithstanding the foregoing sentence, the City and the Agency hereby acknowledge that, so long as the Master Developer is not in default of its obligations under the DDA, the Master Developer is an intended third party beneficiary of certain rights of the Agency under the following provisions of this Cooperation Agreement, provided, however, that Master Developer's sole recourse in the event of default by the City shall be to enforce this Cooperation Agreement as provided in Section 5.1 hereof, and shall not, under any circumstances, include monetary damages or monetary relief of any sort. Master Developer's rights shall be limited to the enforcement of the following provisions:

Section 2.1. Acquisition of Site from Government.

Section 2.2. Agreement to Sell to Agency.

Section 2.5 Escrow.

Section 4.1. General.

Section 4.2. Review of Plans and Entitlement Applications.

Section 4.2.1. Acknowledgment of Private Nature of Project.

Section 4.3. Other Governmental Agency Permits.

Section 4.4. Public Financing.

Section 4.5. Capacity Fees.

Section 4.6. Remediation and Recycling.

5.5 Amendments and Waivers. This Agreement may be amended any number of times upon the mutual approval of the Agency and the City. Any amendment to the provisions listed in Section 5.4 which has a material adverse impact on Master Developer shall require the express written consent of the Master Developer. All waivers of any of the provisions of this Agreement must be mutually agreed upon in writing.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

"CITY"  
THE CITY OF SAN DIEGO

By: Michael T. Uberuoge

"AGENCY"  
REDEVELOPMENT AGENCY OF THE  
CITY OF SAN DIEGO

By: Hank Cunningham  
Hank Cunningham  
Deputy Executive Director

APPROVED AS TO FORM AND LEGALITY  
ON THIS 30 DAY OF JUNE, 2000

CASEY GWINN  
City Attorney

By: Richard A. Duvernay  
Richard A. Duvernay, Deputy

APPROVED:

KANE, BALLMER & BERKMAN  
Agency Special Counsel

By: \_\_\_\_\_



Glenn F. Wasserman